

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES CONNER,

Defendant-Appellant.

UNPUBLISHED

August 19, 2010

No. 290284

Wayne Circuit Court

LC No. 08-002783-FC

Before: MURRAY, P.J., and DONOFRIO and GLEICHER, JJ.

PER CURIAM.

Defendant James Conner appeals as of right his bench trial convictions of armed robbery, MCL 750.529; two counts of assault with intent to commit great bodily harm less than murder, MCL 750.84; malicious destruction of personal property \$200 or more but less than \$1,000, MCL 750.377a(1)(c)(i); and unlawful driving away an automobile, MCL 750.413. Conner was sentenced to concurrent terms of 15 to 30 years' imprisonment for armed robbery, 19 months' to 10 years' imprisonment for assault, 10 months' to 5 years' imprisonment for the unlawful driving away of an automobile, and time served for malicious destruction of property.¹ Conner was assessed costs and fees of \$1,360 and was awarded 356 days' credit for time served. Conner was subsequently resentenced on the armed robbery conviction to 10 to 25 years' imprisonment and was awarded 497 days' jail credit. We affirm but remand for correction of the judgment of sentence.

Conner contends there was insufficient evidence to support his armed robbery conviction. Specifically, Conner argues that the prosecution failed to show: (1) he intended to permanently deprive the victim of his property; (2) he used actual force or violence or placed the victim in fear as required by the statute. Conner further asserts that he lacked the requisite intent due to having incurred a head injury. While Conner's arguments rely on acceptance of the evidence that supports his version of the events, this Court must apply the correct standard of review that requires viewing the evidence in a light most favorable to the prosecution. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). "Circumstantial evidence and reasonable

¹ These sentences were all made consecutive to another case, Wayne Circuit Court number 08-000127-FH, because defendant committed the offenses while he was free on bond.

inferences arising from that evidence can constitute satisfactory proof of the elements of a crime.” *People v Allen*, 201 Mich App 98, 100; 505 NW2d 869 (1993).

The armed robbery statute references the unarmed robbery statute to define the conduct that constitutes robbery. MCL 750.529. The unarmed robbery statute provides:

(1) A person who, in the course of committing a larceny of any money or other property that may be the subject of larceny, uses force or violence against any person who is present, or who assaults or puts the person in fear, is guilty of a felony punishable by imprisonment for not more than 15 years.

(2) As used in this section, “in the course of committing a larceny” includes acts that occur in an attempt to commit the larceny, or during commission of the larceny, or in flight or attempted flight after the commission of the larceny, or in an attempt to retain possession of the property. [MCL 750.530.]

To elevate an unarmed robbery to an armed robbery requires that a defendant “possesses a dangerous weapon or an article used or fashioned in a manner to lead any person present to reasonably believe the article is a dangerous weapon.” MCL 750.529.

There is no question that Conner committed an armed robbery. Conner approached the driver’s side of the victim’s vehicle carrying a baseball bat and demanded money. When the victim refused, Conner smashed the vehicle’s window with the baseball bat. When the victim exited the vehicle, Conner rushed at him while swinging the baseball bat and then jumped into the van. Conner was attempting to leave when the victim reached inside, grabbed the steering wheel, and attempted to hang on to the vehicle. Conner tried to dislodge the victim by alternately braking and accelerating and then shifted into reverse and accelerated, proceeding approximately 25 to 30 feet while the victim was dragged alongside the vehicle. The victim was able to enter the van and force Conner out of the vehicle.

The armed robbery statute is satisfied if a defendant uses force or violence, *or* assaults *or* puts another person in fear. MCL 750.530(1). Conner is mistaken in his assertion that the statute requires the use of actual force for a conviction. His argument is unavailing as his use of the baseball bat as a weapon to assault the victim sufficed to meet the statutory requirement regardless of the victim’s professed or displayed level of fear. Even if, as alleged by Conner, he did not have the baseball bat in his possession while he attempted to flee, the purported absence of the weapon at this point in the commission of the crime is irrelevant, as the statute only requires possession of the weapon while engaged in “conduct” occurring “in the course of committing a larceny,” not at its completion or culmination. MCL 750.529; MCL 750.530. In addition, the victim testified that he was in fear of being injured while Conner was wielding the baseball bat. “This Court will not interfere with the trier of fact’s role of determining the weight of the evidence or the credibility of the witnesses.” *People v Passage*, 277 Mich App 175, 177; 743 NW2d 746 (2007) (internal citations omitted).

Recognizing that armed robbery is a specific intent crime, Conner next asserts he lacked the intent necessary to sustain his conviction. He contends that the prosecutor failed to demonstrate the intent to permanently deprive the victim of his property rather than merely an attempt to procure a ride. Conner relies in part on the fact that, immediately before confronting

the victim, he asked a mailman for a ride. While no one disputes that this interaction occurred, the evidence was sufficient to show that Conner possessed the requisite intent when he approached the victim. “Intent is a mental attitude made known by acts” and has been defined as “a secret of the defendant’s mind,” which can be ascertained through words or actions, with recognition that a defendant’s actions often “speak louder than words.” *People v Strong*, 143 Mich App 442, 452; 372 NW2d 335 (1985) (citation omitted). “Because the law recognizes the difficulty of proving an actor’s state of mind, minimal circumstantial evidence is sufficient to sustain a conclusion that a defendant entertained the requisite intent.” *Id.* When Conner approached the victim he did not ask for a ride but demanded money. When refused, Conner smashed the vehicle’s window and then attempted to drive away in the victim’s van. Based on these established facts it was neither a leap in logic nor unreasonable to infer that Conner had the requisite intent to commit an armed robbery.

Conner also alleges that because he incurred head trauma from a confrontation that occurred immediately preceding his attempt to steal the van, he was incapable of forming the necessary intent to commit an armed robbery. Conner relies on medical records and his own testimony to support this claim, which he failed to raise in the trial court. In *People v Carpenter*, 464 Mich 223; 627 NW2d 276 (2001), the defendant attempted to avoid or reduce his criminal culpability by demonstrating that he suffered from organic brain damage. *Id.* at 228. The defendant in *Carpenter* asserted, while not legally insane, “he lacked the mental capacity to form the [requisite] specific intent[.]” *Id.* at 225. Our Supreme Court ruled such evidence inadmissible in accordance with MCL 768.21a, ruling:

The Legislature has enacted a comprehensive statutory scheme setting forth the requirements for and the effects of asserting a defense based on either mental illness or mental retardation. We conclude that, in so doing, the Legislature has signified its intent not to allow evidence of a defendant's lack of mental capacity short of legal insanity to avoid or reduce criminal responsibility by negating specific intent. [*Id.* at 241.]

“In effect, the *Carpenter* ruling removed diminished capacity as a viable defense” thereby precluding Conner’s assertion that he was unable to form the intent necessary to sustain his conviction. *People v Tierney*, 266 Mich App 687, 713; 703 NW2d 204 (2005).

Finally, we note *sua sponte* that Conner’s conviction for malicious destruction of property is not included on the judgment of sentence and we remand this matter to the trial court solely for this ministerial correction.

Affirmed but remanded solely for correction of the judgment of sentence. We do not retain jurisdiction.

/s/ Christopher M. Murray
/s/ Pat M. Donofrio
/s/ Elizabeth L. Gleicher